

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION****ENTERED**

October 05, 2021

Nathan Ochsner, Clerk

**UNITED STATES OF AMERICA,
Plaintiff,****v.****JUANA NUÑEZ-GARCIA,
Defendant.**§
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§**CRIMINAL NO. 6:16-87(S)-1****MEMORANDUM OPINION & ORDER**

Pending before the Court is Defendant Juana Nuñez-Garcia's Motion Pursuant to 18 U.S.C. 3582(c)(1). D.E. 127.

I. BACKGROUND

In 2018, Defendant pled guilty to conspiracy to possess with intent to distribute 13.88 kilograms of methamphetamine. She has served 18 months (60%) of her 30-month sentence and has a projected release date, after good time credit, of April 28, 2022. Defendant now moves the Court for compassionate release because her father's medical condition makes it difficult for her parents to care for her minor children.

II. LEGAL STANDARD

The statute, 18 U.S.C. § 3582(c)(1)(A), authorizes a court to reduce a defendant's sentence under limited circumstances:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) *extraordinary and compelling reasons warrant such a reduction . . .*
and that such a reduction is consistent with applicable policy statements
issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

“Neither the [U.S. Sentencing Commission’s compassionate-release] policy statement nor the commentary to it binds a district court addressing a prisoner’s own motion under § 3582.” *United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021). Although “not dispositive,” the commentary to U.S.S.G. § 1B1.13 nonetheless “informs [the Court’s] analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.” *United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (citing *United States v. Rivas*, — Fed. App’x —, 2020 WL 6437288, at *2 (5th Cir. Nov. 2, 2020)).

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. —

The defendant is (i) at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less;

(C) Family Circumstances. —

(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. –

As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary or compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13(1)(A), Application Note 1.

Even if “extraordinary and compelling reasons” for early release exist, the Guidelines’ policy statements provide for a reduction in sentence only if a defendant “is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g).” U.S.S.G. § 1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant’s history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release. *See* 18 U.S.C. § 3142(g).

The Court must also consider whether a reduction is consistent with the applicable section 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. The applicable statutory factors include, among others: the defendant’s history and characteristics; the nature and circumstances of the offense; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; the need to deter criminal conduct and protect the public from further crimes of the defendant; the need to provide the defendant with, among other things, any needed medical treatment; and the various kinds of sentences available. *See* 18 U.S.C. §§ 3553(a)(1)-(7).

“In general, the defendant has the burden to show circumstances meeting the test for compassionate release.” *United States v. Stowe*, 2019 WL 4673725, at *2 (S.D. Tex. Sept. 25, 2019).

III. ANALYSIS

Defendant moves the Court for compassionate release because her father’s medical condition makes it difficult for her parents to care for her three children, ages 2–13 years. In support of this claim, she has offered her father’s medical records showing that he suffers from advanced Parkinson’s disease, dementia, hypertension, and cirrhosis of the liver.

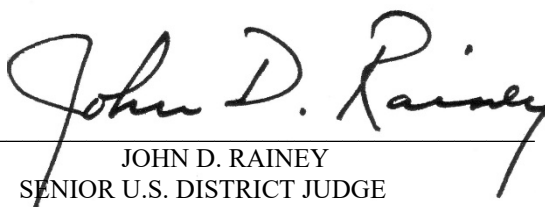
The Court finds that Defendant has failed to demonstrate that she is the only available caregiver for her minor children. Her own motion states that both her parents are the primary caregivers for the children, and she has offered no evidence that her father is incapacitated or that her mother is unable to care for the children; instead, she merely states that her father’s medical condition makes caring for the children “difficult.” D.E. 127, p. 1.

Defendant also has offered no evidence that she has pursued her remedies within the BOP before petitioning the Court for a sentence reduction as required. Because she has failed to demonstrate her compliance with the exhaustion requirements under § 3582, her motion is not ripe for review, and the Court is without jurisdiction to grant it. *See generally, Ross v. Blake*, 136 S. Ct. 1850, 1856–57 (2016).

IV. CONCLUSION

For the reasons stated above, Defendant’s Motion Pursuant to 18 U.S.C. 3582(c)(1) (D.E. 127) is **DENIED**.

It is so **ORDERED** this 5th day of October, 2021.



JOHN D. RAINEY
SENIOR U.S. DISTRICT JUDGE